IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1993 of 2002
with
CIVIL APPLICATION NOS. 6869 OF 2002 and 2028 OF 2003

For Approval and Signature:

Hon'ble MR.JUSTICE D.K.TRIVEDI
and
Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION
Versus
R.N.PATEL

Appearance:
1. First Appeal No. 1993 of 2002
MR KS JHAVERI for Petitioner No. 1
MR SN THAKKAR for Respondent No. 1

CORAM : MR.JUSTICE D.K.TRIVEDI
and
MR.JUSTICE K.M.MEHTA

Date of decision: 21/03/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE D.K.TRIVEDI)

Heard Mr. Jhaveri, learned advocate for the appellant original plaintiff, Gujarat State Road Transport Corporation , and Mr. S.N. Thakkar, learned advocate who appeared for the respondent original defendant. In the Civil Application being Civil Application No. 6869 of 2002 filed by the appellant plaintiff, stay was granted wherein as per the order dated 17.1.2003, this court had issued rule by recording statement of Mr. Jhaveri, learned advocate, that the applicant Corporation has deposited a sum of Rs. 3,67,981/- with the trial court on 12.9.2002 and we directed the trial court to invest the said amount on short term basis initially for six months with a nationalised bank and the rule was made returnable on 14.2.2003 and the appeal being First Appeal No. 1993 of 2002 was admitted.

2. Civil Application No. 2028 of 2003 was filed on behalf of opponent defendant praying for modification of the order passed on 17.1.2003 supported with an affidavit of Shri R.N. Patel dated 4.3.2003. In the said application while seeking modification of the order it is brought to our notice that in view of the decree passed in favour of the defendant, the original plaintiff Corporation has deposited the amount on 12.9.2002 with the City Civil Court and an application for withdrawal of the said amount was filed by defendant on 9.10.2002. Though initially the advocate for the Corporation had objected for the withdrawal of the amount, however, subsequently endorsement made by the learned advocate appearing for the Corporation that he has no objection if the decretal amount is permitted to be withdrawn. In view of the endorsement made by the learned advocate for the Corporation, the City Civil Court has delivered a cheque for a sum of Rs. 3,67,981/- in favour of the defendant on 23.1.2003 and the said cheque was credited in the account of the defendant on 24.1.2003.

3. When the Civil Application being Civil Application No. 6869 of 2002 was notified before us on 3.3.2003, considering the request made by Mr. Thakkar, the office was directed to circulate the Civil Application filed by Mr. Thakkar being Civil Application No. 2028 of 2003 along with Civil Application No. 6869 of 2002 on 7.3.203.

4. Today when the matter was called out for hearing Mr. Jhaveri, learned advocate appearing for the appellant, under instructions from the appellant

Corporation, has submitted that in the present appeal the challenge is only restricted to be made in respect of interest awarded by the trial court while decreeing the counter claim of the respondent defendant while granting interest at the rate of 12% per annum from the date of the suit, as according to Mr. Jhaveri, as per the instructions from the appellant Corporation, the appellant is not pressing the appeal in respect of the decree passed while decreeing the counter claim of the respondent defendant. Accordingly, it is his submission that the interest awarded by the trial court be reduced from 12% per annum to 9% per annum while decreeing the counter claim of the defendant. Mr. S.N. Thakkar, learned advocate, appearing on behalf of respondent defendant has also on the instructions given by his client, stated that his client has no objection for modifying the decree to that extent by reducing the interest from 12% per annum to 9% per annum. In view of the stand taken by the learned counsel appearing in the matter as well as by the parties, we are not required to examine the appeal on merits and the appellant Corporation has only interest in reducing the rate of interest decreed by the trial court while decreeing the counter claim filed by the defendant from 12% per annum to 9% per annum and even Mr. Thakkar, learned counsel for the defendant, has no objection for reduction of interest from 12% to 9% per annum. Accordingly, we dispose of the main appeal without calling for record and proceeding and confirm the decree under challenge. However, we modify the decree of the trial court only in respect of granting interest while decreeing the counter claim filed by the respondent defendant from 12% per annum to 9% per annum. The appeal is, accordingly, allowed partly to that extent. The counter claim of the defendant is modified and the defendant is entitled to a sum of Rs. 2,25,000/- with interest at the rate of 9% per annum from the date of the suit.

5. In view of the order passed in the main matter, no orders are passed on the Civil Applications.

(D.K. TRIVEDI, J)

(K.M. MEHTA, J)

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